



Comments from the Delaware Riverkeeper Network Regarding the Proposed PCBs TMDL Implementation Group January 21, 2003

The suggestion that the Implementation Committee should be designed to reach “mutually satisfactory agreement about how best to allocate financial and human resources to address the problem of PCB discharges into the Delaware Estuary” and that that will be an operation according to a “consensus-building model” is totally inappropriate. The Total Maximum Daily Load program is a regulatory program. While it is valuable to allow for public input into proposed implementation, a requirement that a final program be one that has been achieved amongst all participating constituents is nothing short of ludicrous and will ensure that any implementation proposal achieved is watered down to the greatest extent possible. DRBC should set up a process by which the public and all who are interested are given the opportunity for input and to bring the best thinking possible to the implementation process, but that it not be constrained by the need for consensus before it takes action and/or creates an implementation plan.

In addition, the discharger community has invested heavily in ensuring it has an overwhelming representation at all PCB TMDL meetings and that its voice out competes those of other interests. Because meetings are often held during the work day, because the issues are complex, because the materials involved are voluminous, it is easy for dischargers to invest resources in hiring experts and more voices for their position and to thereby secure greater, and even overwhelming, representation and an outcome more skewed towards their position. A consensus approach feeds this discharger strategy.

The representation recommended for the Group is disproportionately swayed towards serving the interests of the dischargers, thereby providing them an even greater opportunity to manipulate the process and secure weakened recommendations, decisions, proposals and plan. The proposed group composition fails to recognize that it is the public, the anglers, wildlife and others who suffer the ramifications of PCB contamination in our waterways and environment – these groups may not be paying for the problem or its clean up out of their pocket books directly, but we are most certainly paying for it in the form of a degraded environment, health effects, and reduced quality of life and therefore should be given an equal voice in this committee and its activities. Industry and the dischargers have put these toxins into our environment and our lives and have benefited financially from doing so – they have benefited both by using PCBs in their operations and by effectively avoiding (until now) the required cleanup – they cannot now benefit again by having a louder voice in decision making about how to address a mess they have caused and many continue to contribute to. The environment, fishing and other interest groups, wildlife and endangered species must all be given equal representation in the proposed Advisory

DELAWARE riverkeeper® NETWORK - with offices on the main stem Delaware, in the Schuylkill Watershed and the Delaware Estuary

PO Box 326 ■ Washington Crossing, Pennsylvania 18977-0326

Phone: 215-369-1188

Fax: 215-369-1181

E-mail: drkn@delawareriverkeeper.org

www.delawareriverkeeper.org

An American Littoral Society Affiliate

Group. Each of these three categories are impacted in different ways by PCB contamination of our River, each has a different perspective on clean up that needs to be heard and a different body of knowledge and information that needs to be shared, each group is entitled to equal representation in the for of four representatives per group on the Advisory Group.

The link between implementation of the TMDL and the creation of the TMDL is inextricable. TAC members have tremendous information, experience and knowledge to add to the discussions. There needs to be a close link between the Advisory Group and the TAC, a link that the proposed recommendation fails to provide for.

The implementation group is absolutely not the appropriate place to be reworking load allocations and waste load allocations. LAs and WLAs are an integral and required part of the TMDL, they are created with strong input from the science aspects of the work and should not be reworked by the implementation group, to do so is repetitive, counter productive, and particularly scary in light of the fact that under the current proposal the dischargers will be given a disproportionate share of decision making authority and input into the Group's efforts.

It is not realistic to think that stakeholder groups will, in every instance, have the time or ability to get all their constituents together to pick a representative for the implementation group. The dischargers have an organized coalition which is already well funded. Other constituent groups do not have the same resources or financing with which to organize large stakeholder meetings to pick their representatives (an undertaking that certainly would take several meetings to accomplish). A more appropriate approach would be to invite individuals within each constituent group to apply for membership and for DRBC to select representation based upon those submissions.

We do appreciate the recognition that representatives of the public interest will need some level of financial support to undertake all the activities necessary to fully and actively commit to the recommended process.

A number of the issues recommended be decided by the regulatory community outside of public view are key issues for ensuring an effective TMDL. They are not so much part of the implementation group process as the TMDL process and should be dealt with under the existing TAC framework – either with and through the TAC and through regulatory decisionmaking with an opportunity for TAC input.